

January 30, 2012

Arterial Street Impact Fee Economic Development Refund (Incentive)

General: The City of Lincoln is proposing two procedural changes to the impact fee program. The changes relate to program requirements of the “Arterial Street Impact Fee Economic Development Refund (incentive)”. They do not affect impact fee rates.

Why make changes? The Arterial Street Impact Fee Economic Development Refund was reviewed as part of the Development Services Center process improvement effort. The changes are being proposed to 1) look out for taxpayer’s interest, and 2) provide eligible businesses more flexibility with project completion dates.

First proposed change: Under the Beutler administration, it has been the practice to not refund arterial street impact fees until a business has met all performance measures. The City of Lincoln would like to codify this practice into the Impact Fee Ordinance.

Second proposed change: Under current program guidelines, a business which applies for the incentive must obtain an occupancy permit within 18 months of the building permit application date. The existing 18 month time frame was determined arbitrarily and we are recommending dropping the time requirement.

A large project, particularly if a business elects to locate on a “Greenfield” site, can potentially take longer than 18 months to build and gain occupancy. There may also be circumstances outside of the control of the business that slow down a large project (weather, contractor performance, etc.). The eligible business should not be restricted by timing issues, and would still need to meet all program requirements.

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Section 3. Program Qualifications.

(1) ~~An application for~~ A letter requesting “City of Lincoln Payment of Arterial Street Impact Fee to Promote Economic Development” (hereinafter “Application”) shall be filed with the Department of Building & Safety by an employer engaged in business as a service or manufacturing company (“Business”) at the same time as the ~~applicant~~Business applies for a building permit for its Lincoln, Nebraska Project.

(2) The ~~applicant~~Business shall pay a non-refundable application fee of \$300.00, which shall be deposited in the Administrative Fee Fund.

(3) Notwithstanding the filing of the Application, the ~~applicant~~Business shall pay the required Arterial Street Impact Fee prior to issuance of the building permit.

(4) The ~~applicant~~Business shall submit with its Application documentation ~~and evidence~~ which shows that (i) the business is a service or manufacturing company which will, upon completion of its Lincoln, Nebraska Project, derive, directly or indirectly, 50% or more of its revenue from outside of Lancaster County, Nebraska; and (ii) the median wage for its new employees will be equal to or in excess of 110% of the Lancaster County average wage.

(5) ~~The applicant shall complete construction of its Lincoln, Nebraska Project and receive a signed certificate of occupancy from the Department of Building & Safety within 18 months following issuance of the building permit.~~ Receipt of a signed certificate of occupancy from the Department of Building & Safety following construction of its Lincoln, Nebraska Project shall be the project’s “Date of Completion.”

~~—— (6) — Following the date of issuance of the certificate of occupancy, the applicant~~ Following the Date of Completion, the Business shall have two years to derive 50% or more of its revenue from outside of Lancaster County and meet the required median wage for new employees. Upon attainment of said thresholds, the ~~applicant~~Business must maintain those levels for three consecutive years.

In the event a signed certificate of occupancy is not required for use of the building, the Date of Completion shall be the date of substantial completion of the building as determined by the City.

The following transactions or activities are not eligible for the City of Lincoln’s payment of Arterial Street Impact Fees under this program:

(1) The acquisition of a business which is continued by the purchaser; and which was operated in the City of Lincoln at any time during the three hundred sixty-six (366) days prior to the date of application, or the date of acquisition, whichever is later. All employees of the business during such three hundred sixty-six (366) days shall be considered base-year employees.

~~—— In the event a signed certificate of occupancy is not required for use of the building, the Date of Completion shall be the date of substantial completion as determined by the~~

City.

(2) The moving of a business, which was operated in the City of Lincoln at any time during the three hundred sixty-six (366) days prior to the date of application from one location in the City of Lincoln to another. All employees of the business during such three hundred sixty-six (366) days shall be considered base-year employees;

Section 4. Impact Fee Administrator Review of Application.

The Impact Fee Administrator shall review the Application and the materials submitted and make a determination as to whether, upon completion, the proposed Lincoln, Nebraska Project ~~is consistent with the purposes of this program~~ will be able to meet the eligibility requirement in Section 3 above. The Application shall ~~not be approved until the applicant has submitted a complete Application, paid the application fee, and filed with the Impact Fee Administrator a copy of the signed certificate of occupancy from the Department of Building and Safety.~~

Section 5. Reimbursement of Impact Fee Previously Paid.

Upon the Impact Fee Administrator approving the Application, ~~the City of Lincoln from its General Fund shall pay on the eligible business' behalf all or a portion of the required Arterial Street Impact fee for the Lincoln, Nebraska Project in question. The amount of the fee paid shall be the lesser of the Arterial Street Impact Fee or two times the "free cash flow" to the general fund as calculated by use of the Impact Fee Payment Formula attached hereto marked as Exhibit A. Upon the City of Lincoln making said payment, the business shall be entitled to reimbursement of the Arterial Street Impact Fee the business previously paid as a condition of the issuance of the building permit in the same amount as that paid by the City. However, said reimbursement shall be conditioned upon the owners agreeing upon demand of the City to repay the reimbursement, with interest at the rate earned by the City on its impact fees, in the event the business fails to obtain and maintain the thresholds provided in Section 3 above. The owners' obligation to repay the reimbursement shall be guaranteed by the owners furnishing the City with a bond, escrow, or security agreement approved by the City Law Department in the amount of the reimbursement. Approved Applications shall be paid in the order in which they are first allowed. Any and all approved payments of Arterial Street Impact Fees are contingent upon the availability of appropriated funds. Approved Applications for the payment of Arterial Street Impact Fees on behalf of the eligible business which exceed the line item budget for said payment in the General Fund will not be paid unless specifically authorized by the City Council.~~ the Business shall be entitled to reimbursement of some or all of the Arterial Street Impact Fee the Business previously paid as a condition of issuance of the building permit, provided that:

(1) Within two years following the Date of Completion, the Business meets the required threshold that (a) 50% or more of its revenue is derived from outside of Lancaster County and (b) that its median wage for new employees meets or exceeds 110% of the Lancaster County average wage; and

(2) The Business maintains the above required threshold for three consecutive years

thereafter.

The amount of the fee paid shall be the lesser of the Arterial Street Impact Fee or two times the “free cash flow” to the general fund as calculated by use of the Impact Fee Payment Formula attached hereto marked as Exhibit A. Approved Applications shall be paid in the order in which they were first allowed. Any and all approved payments of Arterial Street Impact Fees are contingent upon the availability of appropriated funds. Approved Applications for the payment of Arterial Street Impact Fees on behalf of the Business which exceed the line item budget for said payment in the General Fund will not be paid unless specially authorized by resolution of the City Council.

Section 6. Collection of Reimbursement.

~~1. If the business fails to meet the required thresholds that 50% or more of its revenue be derived from outside of Lancaster County and that its median wage for new employees meet or exceed 110% of the Lancaster County average wage by the end of the second year and/or fails to maintain said thresholds for three consecutive years thereafter, all of the reimbursement previously paid shall be due and owing and the business shall repay the City of Lincoln the full amount of said reimbursement. If the business fails to make said payment within thirty days following the date the business is notified to pay the same, the City may call or sue upon the bond, escrow, or security agreement.~~

~~2. The repayment required by this section shall be forgiven if the failure to maintain the required levels of employment was caused by an act of God or national emergency.~~

Section 67. Reimbursement; Transfer; When; Effect.

The approved Application for reimbursement of the Business' ~~The reimbursement payment to the business following the City's payment of the business' Arterial Street Impact Fee shall not be transferable to another business except in the following situations:~~

(1) The approved Application ~~The reimbursement payment~~ may be transferred to an acquiring business when ownership of the Lincoln, Nebraska Project, covered by an approved Application, is transferred in its entirety by sale or lease to another business or in an acquisition of assets qualifying under section 381 of the Internal Revenue Code of 1986.

(2) If a sole proprietor of a business operating under an approved Application dies, ~~and there is a reimbursement unpaid;~~ the Impact Fee Administrator shall transfer the approved Application ~~distribute the reimbursement~~ to the sole proprietor's heir(s).

Section 78. No Interest Allowed on Reimbursement.

Interest shall not be allowed on any reimbursement paid.

Section 89. Speculative Buildings.

(1) Notwithstanding any provision of this Policy to the contrary, a bBusiness that applies for a building permit to construct a new building for sale as a speculative industrial building may apply for a deferral of filing an Application conditioned upon the sale of the building and transfer of the business' reimbursement rights to a qualified business. Said sale and transfer must occur not more than three years following the date that the building permit was issued for the speculative building. Upon completion of the sale and transfer, the qualified bBusiness shall have six months in which to submit an Application and receive final approval of the Application. Thereafter, qualification for the City of Lincoln payment of Arterial Street Impact Fees and reimbursement of iArterial Street Impact fFees previously paid shall be based upon satisfactory completion of the project as provided in Sections 1 through 78 above.

(2) A bBusiness that applies for a building permit to construct a new building for lease as a speculative industrial building may apply for a deferral of filing an Application conditioned upon the lease of the building; transfer of the bBusiness' reimbursement rights; and a signed disclosure agreement by the lessee. Said lease agreement must be consummated not more than three years following the date the building permit was issued for the speculative building. Upon execution of the lease agreement, the lessee shall have six months to submit an Application and receive final approval of said Application. Thereafter, qualification for the City of Lincoln's payment of Arterial Street Impact Fees and reimbursement of iArterial Street Impact fFees previously paid shall be based upon satisfactory completion of the project as provided in Sections 1 through 78 above.